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September 16, 2022

VIA ECF

Hon. Brian M. Cogan
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Al Malik Alshahhi, et. al., No. 1:21-cr-00371 (BMC)

Dear Judge Cogan:

Defendants Thomas J. Barrack and Matthew Grimes respectfully submit this letter-motion to request leave to file the accompanying proposed sur-reply (Ex. A) to address the government's new *Bruton* proposal and the new set of proposed excerpts of Mr. Grimes' grand jury testimony that the government seeks to admit.

A sur-reply should be permitted if it would "provide[] relevant information to the disposition of [the] case," *Anghel v. N.Y. Dep't of Health*, 947 F. Supp. 2d 284, 293 (E.D.N.Y. 2013), *aff'd*, 589 F. App'x 28 (2d Cir. 2015) (summary order), or "avoid giving [an] unfair advantage to the [opposing] party." *Bayway Ref. Co. v. Oxygenated Mktg. & Trading A.G.*, 215 F.3d 219, 226–27 (2d Cir. 2000). "This is particularly so when new arguments are put forth in a reply brief," *Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc. v. Am. Boat Co., LLC*, 2012 WL 32352, at *1 (S.D.N.Y. Jan. 6, 2012), or "[w]here new evidence is presented in a party's reply brief or affidavit in further support of its . . . motion." *Litton Indus., Inc. v. Lehman Bros. Kuhn Loeb Inc.*, 767 F. Supp. 1220, 1235 (S.D.N.Y. 1991) (collecting cases), *rev'd on other grounds*, 967 F.2d 742 (2d Cir. 1992). Those precise circumstances are present here.

The government's new *Bruton* proposal—discussed for the first time in its reply (ECF 235)—raises new problems that Defendants have not had an opportunity to address. Moreover, the excerpts that remain for the Court's consideration require additions under the rule of completeness that are different from those originally proposed by Defendants, as we were looking at the totality of designated testimony at the time, which has since shifted.

Defendants respectfully submit that they should be granted an opportunity to respond to the new *Bruton* proposal and set of excerpts for the Court to have all the relevant arguments at its disposal when weighing the issues raised. For all of the foregoing reasons, a sur-reply is warranted here.

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Respectfully submitted,

/s/ Abbe David Lowell

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cc: All counsel of record (via ECF)